

Chapter 2: Legal Issues

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CHAPTER 2: LEGAL ISSUES

A. Overview

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|---|---|
| 1. <i>What does this chapter cover?</i> | Listed and discussed in this chapter is the primary legislation that affects access and use of NPS museum and archival collections. |
| 2. <i>Where can I get additional information on these laws?</i> | <p>For a quick summary, see <i>Museum Handbook</i>, Part II (<i>MH-II</i>), Appendix A, Mandates for Collection Management. Most law school libraries have extensive collections on these topics. The easiest and fastest way to get an overview of applicable laws is to view the World Wide Web sites in the bibliography, particularly the following:</p> <ul style="list-style-type: none">• legislation section of the NPS Website at
<http://www.cr.nps.gov/crweb1/linklaws.htm>• American Association of Museums Registrars Committee Rights and Reproductions Information Network (RARIN) at
<http://www.panix.com/~squigle/rarin/01rcsite.html>• Harvard University's Intellectual Property Primers at
<http://cyber.law.harvard.edu/property/library/primerlib.html>• National Humanities Alliance's Basic Principles for Managing Intellectual Property in the Digital Environment at
<http://www.ninch.org/#issues>• University of California at Berkeley's Copyright, Intellectual Property Rights, and Licensing Issues at <http://sunsite.berkeley.edu/copyright/>• University of Texas at Austin's Copyright Crash Course at
<http://www.utsystem.edu/ogc/intellectualproperty/cprtindx.htm> <p>If Internet addresses should change, search on the keywords in the above Web addresses.</p> |

B. Access and Use Legislation

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|---|--|
| 1. <i>What laws affect the use of museum collections?</i> | <p>The primary legislation that affects access and use of NPS museum collections includes:</p> <ul style="list-style-type: none">• Freedom of Information Act (FOIA 5 USC 552)• Copyright (17 USC 101-810 et seq. (1988 & Supp. V 1993); Sonny Bono Term Extension Act of 1998 (PL 105-298, 112 Stat. 2827); Visual Artists Rights Act (10 USC 106a); Digital Millennium Copyright Act (PL 105-304, 112 Stat. 2860) |
|---|--|

- Patents (U.S. Constitution Article I, Section 8 and 35 USC)
- Trademarks (15 USC 1051 [a]-[b]; Trademark Law Treaty of Geneva, October 27, 1994)
- Privacy (5 USC 552a and state laws including Restatement [Second] Of Torts 652A-652I and the Lanham Act Section [15 USC 1125])
- Publicity (state common or statutory law in almost half the states)
- Obscenity and Pornography (state law as well as federal, including the Child Protection Act of 1984)
- Defamation, including slander and libel (state law)
- Archaeological Resources Protection Act (16 USC 470 aa-mm)
- National Historic Preservation Act of 1966, as amended (16 USC 470-470t, 110)
- Executive Order 13007—Indian Sacred Sites (May 24, 1996)
- Federal Cave Protection Act of 1988 (16 USC 4301-4309)
- National Parks Omnibus Management Act of 1998 (PL 105-391) (See 16 USC 1a-5.)
- Changing Case Law

Further information on applicable legislation, including legal mandates for protecting, preserving, and documenting NPS museum collections, appears as Appendix A, Mandates and Standards for NPS Museum Collections Management in the *Museum Handbook*, Parts I and II.

2. *How do I address reference questions involving legal issues?*

See the Access and Use Legal Action chart in Figure 2.1 as a guide for addressing various reference questions that may pose legal issues. Figure 2.1 describes the type of request in the first box, the applicable legislation in the second, and the suggested action by park staff in the third box.

C. Copyright Laws

1. *What is copyright?*

The Copyright Act of 1976 (17 USC 101-810 et seq. [1988 & Supp. v. 1993]) grants creators (for example, authors, artists, and architects) exclusive rights to their creative work, from the moment the work is in fixed form. Copyrights are a bundle of rights given to creators, including the economic rights to:

- ***reproduce the work***

- ***distribute copies*** by sale, lease, rental, loan, or transfer of ownership (including the right to control the first public distribution or publication of the work)
- ***publicly perform the work*** by recital, playing, dancing, rendering the work in a public space or by a public transmission of images and sounds through technological means
- ***adapt and prepare derivative works from the original work***, including translations, art reproductions, spin-off products
- ***publicly display the work*** by showing more than a single copy of the work either directly or by means of a film, slide, television image or other device or process

The creator of a work may divide the rights to the work and transfer some or all of the rights to another at his or her discretion. The creator may give, sell, or license any right or rights (such as the right to prepare derivative works, such as posters or T-shirts) to another, while retaining other portions of the copyright. Copyright sales or transfers may be exclusive (all copyrights to Company X) or for a specific purpose, time, or place (for example, a single edition of a book).

2. *What is the right of “first sale?”*

The right of first sale is an exemption to the creator's copyright to sell a work. Any individual, who lawfully owns a copy of a work, has the right to “first sale” of the work. That is, a collector who has bought a work from a creator may sell or otherwise dispose of his or her lawful copy without permission from the creator who owns the copyrights.

For example, if you purchased a copy of a poster, you may later resell or donate that poster to whomever you please without obtaining permission from the creator or other copyright holder. However, you may NOT duplicate, publicly distribute, perform, or exhibit multiples of that poster. Most states (except California) don't require that a portion of revenues from sales of works automatically go to the original creator of the work.

3. *What are visual artist's moral rights?*

Under Section 106(A) of the Copyright Law, artists and other creators of visual work created after June 1, 1991, are given the additional “moral” rights of having:

- their works properly attributed (correct captions and credit lines)
- no works created by others (not the artist) wrongly attributed to the artist
- their works created after June 1, 1991, protected from destruction during the artist's lifetime
- the integrity of their works maintained (no destruction; no rearranging composition, color values, or picture elements)

4. *What laws make up*

In the United States, the following laws and treaties govern copyright:

copyright?

- United States Constitution (Article I, Section 8)
- Copyright Act of 1976
- Sonny Bono Term Extension Act of 1998 (PL 105-298, 112 Stat. 2827)
- Digital Millennium Copyright Act, (PL 105-304, 112 Stat. 2860)
- Visual Artists Right Act (70 USC 106a)
- Case law
- International treaties:
 - Berne Convention for the Protection of Literary and Artistic Works
 - North American Free Trade Agreement Implementation Act
 - Uruguay Round Agreements Act (17 USC 104a and 109)

5. *What is covered by copyright?*

The Copyright Act of 1976 protects any original material in fixed form from the moment of creation, including:

- architectural designs, including drawings, plans, and structures
- archival and manuscript materials, including correspondence and oral histories
- audiovisual works
- computer software
- dramatic and literary works
- graphic and pictorial works
- motion pictures and videotaped works
- photographic works
- recorded or notated choreographic works and pantomime
- recorded or notated musical works and sound recordings
- sculptural works
- vessel hull designs

6. *Can a person copyright an idea or fact?*

No. Only the author's unique, original expression (such as his/her words, image, object, or composition) is protected, ***not*** ideas, facts, or topics. Your photograph or words are protected, but other individuals can write about the

same topic or photograph the same object.

Copyright protects their unique work, just as it does yours. The topic, scene, or scenario can't be copyrighted, only the particular work based upon the topic or scene. The original work must be in a fixed form.

7. *What is not protected by copyright?*

Copyright doesn't protect:

- copy images (including digital and photographic works) of works if the copies are slavish or lacking in originality (Bridgeman Art Library Ltd vs. Corel Corporation 1999, U.S. District Court for Southern District of New York)
- works created by U.S. Government employees and federal contractors, though for contractors this depends upon the exact wording of the contract (See Sections C.8 and C.9 below for further guidance.)
- ideas or concepts (patents protect ideas or concepts)
- facts
- systems, procedures, or methods of operation
- common or standard works, such as:
 - height and weight charts
 - blank forms
- works with little creative authorship, such as
 - slogans and short phrases
 - names and titles
 - variations in typographic lettering, coloring, or ornamentation

8. *Why are federal employees' works not protected by copyright?*

Works produced by federal employees within the scope of their employment are **not** protected by copyright because they are considered works-for-hire. Works-for-hire are those produced by employees as part of their responsibilities. Federally produced works are in the public domain as federal works-for-hire.

Today, unless otherwise agreed to in writing by both employer and employee, non-federal employers automatically own the copyrights to the works of their employees created within the scope of employment.

In a work-for-hire situation, the employer becomes the *de facto* creator in the eyes of the law. Thus the creator/employer owns the copyrights. Since governmentally produced works are **not** protected by copyright, this puts the

works produced by federal employees within the scope of their employment in the public domain. ***This is not necessarily the same for contractors, whose work is protected by copyrights that they retain unless their contract very explicitly says otherwise.*** See below.

When a work, such as a book, consists of chapters or figures by both federal and non-federal creators (artists, authors, or photographers, for example), place a notice in the introduction indicating what portion (particular chapters, pages, and figures) of the work is covered by copyright protection. A notice might look like the following sample:

Copyright 1999, Susan Smith, Copyright claimed in chapters 5-7 and figures 5-1 through 7-30, exclusive of U.S. Government forms D-93 and D-333.

The notice assists researchers who want to obtain permission to use the work. **Note:** If, on their own time, federal employees create original works that have no relationship to their duties, the employees may copyright the works. If the works in question are related to their federal duties, the employees should obtain clearance from their NPS ethics officer before publishing and copyrighting the works.

9. *Are the works of federal contractors, cooperators, partners, and volunteers protected by copyright?*

No, not if your contract or agreement was written correctly. If you hire independent contractors or work with cooperators, volunteers, and partners who create source material (such as a publication, painting, or World Wide Web home pages), be sure that you have a written contract, cooperative agreement, or memorandum of understanding ***before*** the contractor begins work.

To be effective, the contract, memorandum of understanding, cooperative agreement, or other written agreement must stipulate what happens to the copyrights of all work completed. See Figure 3.7 for a sample.

The contract, memorandum of understanding, cooperative agreement, or other agreement ***should expressly state that the individual's work is a work-for-hire and all copyrights belong to the National Park Service.*** If for any reason the contractor's work is deemed not to be a work-for-hire, your contract should stipulate that the contractor transfers any and all rights that he might have to the NPS.

Ensure that all your federal contracts and agreements state that all copyrighted works and the copyrights of those works created as part of the contract or agreement belong to the federal government. Otherwise you may find that you are legally obligated to pay a royalty to the contractor, cooperator, partner, or volunteer each time you use the materials as they will own the copyrights.

10. *How do I handle unpublished materials?*

Unpublished manuscripts, drawings, and other materials may still be subject to copyright protection. Under the new law, the work is protected for the life of the creator plus 70 years or at least until December 31, 2002, whichever is later.

Works by authors who died before 1929 are no longer protected nor are anonymous unpublished works or pseudonymous works and works-for-hire created before 1879.

Works created before 1978 that are published before January 1, 2003, are protected for the life of the author plus 70 years or at least until December 31, 2047, whichever is greater.

If the author's death date is unknown, the work is protected for 120 years from the date of creation. See Sections C.20 and C.21 of this chapter for assistance in determining the duration of copyright protection.

If you wish to publish an unpublished work, get permission from the copyright holder or his or her heirs. See Section C.9. Contact the NPS solicitor for assistance on how to proceed.

11. *What is fair use?*

Fair use is an exception to copyright protection. The Copyright Act permits limited reasonable use of a work that is not harmful to the rights of the copyright owner. Fair use by definition is reasonable copying done without the permission of the owner for purposes such as:

- non-profit teaching (including multiple copies for classroom use)
- private study, scholarship, or research
- satire, parody, commentary, and criticism
- news reporting

You may always copy or adaptively reuse facts and ideas, but NOT the specific words in which they were expressed.

12. *What criteria determine fair use?*

Don't assume that simply because a proposed use is non-profit, educational, scholarly, for news reporting, or for purposes of satire or parody that it is automatically a fair use. Fair use is subject to a case-by-case analysis of the four factors listed below:

- ***The purpose and character of the use:*** To be judged fair use, a usage should be a "transformative" use that adds value to the work. Works that add significant new commentary, contextualization, or content to the work are more apt to be judged fair than would be a simple quote. Generally, uses for personal research, criticism, satire, parody, or news reporting are more likely to be judged fair uses.

Commercial uses are less likely to be judged fair, while nonprofit usage is more likely to be judged fair. Commercial means that money was made using the material in question, even if the institution that made the money was a non-profit.

Commentary is a fair use, while a quote may not be. Substantial quotes

are frowned upon, particularly in a commercial setting. Simply stating that you are quoting the item for news reporting purposes when you substantially quote a work does not excuse or authorize your use. You must offer transformative commentary or report on the material, which adds value to the work.

- ***The nature of the copyrighted work:*** Is the work fact or fiction? Is the work published or unpublished? You may quote facts and concepts, but ***not*** particular wording, except for fair use purposes (such as commentary, parody, satire, criticism, news reporting, teaching, private study, scholarship, or research). All usages of creative, dramatic, or fictional works are more likely to be judged infringements than are non-fictional or conceptual quotes.

The courts generally grant creators the right to control the first publication of their work, so infringements of unpublished materials tend to be dealt with more harshly if they involve a first publication situation by someone other than the creator or the creator's heirs.

- ***The amount and significance of the portion of the work to be used:*** Fair use is based upon the amount of the work being copied ***and*** the significance of the portion being copied in relation to the entire work. Using a whole work or the most significant section of a work is frowned upon. There is no pre-set amount or percentage of an item that is always okay to publish. Copying 5 relatively insignificant pages of a 75-page document may be judged acceptable, while copying the single most significant page may not. One page letters or photographs clearly shouldn't be used in their entirety.

Close paraphrasing of part or all of a document and other forms of plagiarism violate copyright protection unless you are simply repeating facts.

- ***The relationship of the item's use to the market for the item:*** Might the use affect the current or future market for the item? If a usage affects sales, to what extent are sales affected?

If you begin distributing copies to people who normally buy the item, you are having a negative effect. A ranger may be allowed to copy a page of a publication for a free park course for staff as that will have a minimal effect on the future demand for the item. Usages that serve as equivalents to the original item in the marketplace (also known as market substitutes) are generally not judged to be fair usage.

A commercial training organization's use of the same material repeatedly in a profit-making course may be judged an unacceptable use. It doesn't matter if the item is currently out-of-print, rare, or still being sold on the newsstand, copying may be viewed as affecting an existing or potential market for the work. The extent of the effect must be determined.

13. *Are there additional copyright exemptions besides fair use?*

The library/archival provision of the law (under section 108 of the Copyright Act of 1976) has three collections management exemptions that allow archives, libraries, and to a lesser extent museums open to the public to make:

- a preservation copy
- a security copy
- a copy for deposit in another research institution

Under the Digital Millennium Copyright Act, up to three preservation copies in digital or analog form may be made of textual works when:

- the library or archives already has an original copy of the work (even if the original copy has been lost or stolen)
- the copy is solely for preservation, security, or deposit in another library
- the copy will be available only in the archives or library, not outside the archives or library. **Note:** There is one exception to this rule. Copies may be made for deposit in another library for purposes of preservation or security
- the format of the original has become obsolete, such as if equipment or devices necessary to play it are no longer being manufactured or no longer commercially available

Note: Audiovisual, film, graphic, pictorial, musical, and sculptural works are not covered under this preservation copying exemption and should NOT be copied under this provision of the copyright law.

When museums, libraries, and archives want to copy works without infringing copyright, according to Section 108 of the Copyright Act, the institutions must:

- be open to the public without restrictions or to a specified portion of the public, such as a group of researchers on a particular topic
- not provide the copy for commercial purposes or for distribution outside of the premises of the repository other than for face-to-face teaching activities within a classroom
- include a copyright notice on or with the copies provided or a clear statement about the applicability of copyright to the work

14. *Why and when must I place copyright notices on copies and copiers?*

Although original works don't require a copyright notice to be protected, notices serve as an excellent warning when materials are protected, particularly for copies. Such notices can protect archives, libraries, and museums from lawsuits. By law, copies provided for fair use purposes MUST be marked with a copyright statement if the copy is to meet the fair

use criteria. Each copy should carry one of the following notices:

- ***If the original work already has a copyright notice***, place the following statement on the copy: “*The work from which this copy was made included the following copyright notice: ‘[transcribe the original notice and place it here].’*”
- ***If the original work has no copyright notice***, place the following notice on the copy as a rubberstamp, typed transcription, or other marking: “The work from which this copy was made didn’t include a formal copyright notice. This work may be protected by U.S. copyright law (17 USC), which governs reproduction, distribution, public display, and other uses of protected works. Uses may be allowed with permission from the copyrights holder, or if the copyright on the work has expired, or if the use is ‘fair use’ or within another exemption. The user of this work is responsible for compliance with the law.”
- ***Copiers and copy order desks should have the following notice posted:***

“The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specific conditions is that the photocopy or reproduction is not to be ‘used for any purpose other than private study, scholarship, or research.’ If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of ‘fair use,’ that user may be liable for copyright infringement. This institution reserves the right to refuse a copying order if, in its judgment, fulfillment of the order would involve violation of copyright.”

When you attempt to apply it, copyright law may seem ambiguous. If you are uncertain about whether your proposed use is a fair use, obtain permission from the copyright holder or don't use the item. Practically speaking, uses that don't affect the market for the work and that use a small portion of a work, are the least likely to have problems in court. Request help from the NPS solicitor if you have questions.

For further guidance read *MH-II*, Appendix D, Museum Archives and Manuscript Collections, Section T, Providing Access to Archival and Manuscript Collections and Section U, Identifying Appropriate Restrictions for Archival and Manuscript Collections.

Watch for developments in copyright case law. Case law determines how a balance is struck between the rights of the creator and the needs of the user. See the bibliography Web resource list, particularly FindLaw's site at <<http://www.findlaw.com/cascode/>>, for guidance on how to track appropriate case law developments.

A recent case addressed whether fair use applied to the widespread photocopying of journal articles by scientists engaged in research on behalf of their employer, a private corporation that subscribed to the journal for the

scientists' use. The corporation did not obtain permission or pay additional compensation to the publisher of the journal for the photocopies.

The court held that such photocopying was *not* a fair use and infringed on the copyright held by the publisher of the journal. This interpretation of fair use has ramifications for those who reproduce materials subject to copyright,

whether in electronic or print form, without the permission of, and possible compensation to, copyright owners.

15. *Is fair use different in a networked electronic environment?*

Although the concept of fair use is the same, applying it may be quite different. In addition, legislation and case law are only beginning to catch up with recent changes in technology. Recent legislation, such as the Digital Millennium Copyright Act (DMCA), has changed some of the rules. The DMCA exempts online service providers from some copyright infringement claims, prohibits removal of identifying information from copyrighted works, prohibits technological removal or circumvention of devices designed to protect copyrights, and allows archives and libraries to make digital copies for archival purposes. See Section C.11 for how to legally use digital media for preservation.

The recent ruling *Bridgeman Art Library, Ltd vs. Corel Corp.* (25 F. Supp. 2d 421 [SDNY 1998] on reconsideration, 36 F. Supp. 2d 191 SDNY 1999) found that photographic reproductions of public domain works weren't protected by copyright as they lacked originality. However, original electronic materials are protected by copyright. If you copy something electronically that doesn't meet the fair use criteria described in Section C.10, you may be charged with copyright infringement.

Some examples of potential electronic infringements include:

- ***Quoting another person's message in its entirety in the body of your e-mail message:*** Instead, state in a summary sentence what the discussion was about.

In some contexts, such as commenting on the original message in the original electronic location, this may be an implied license (see below), because reasonable people expect comment on the information they post on public bulletin boards. Sending the quoted message to another electronic bulletin board, however, may be an infringement.

Messages produced by government employees during the scope of their work are not copyrighted. Such federally produced work is in the public domain. Many of the federally produced messages on government bulletin boards may be quoted or reproduced in their entirety without reservation.

Don't reproduce messages by non-federal correspondents in their entirety in your message or forward them to other bulletin boards without permission of the creator. Significant quotes from non-federal correspondents' messages should be done with discretion, and only when there is an implied license (see below). The legality of such unapproved uses is decided on a case-by-case basis.

Conversely the NPS is responsible for any copyright infringements done by employees within the scope of their work, including:

- ***Downloading a Web publication and forwarding it to a bulletin board or newsgroup:*** Instead, post the uniform resource locator (URL) or Internet address. Downloading a copyright protected publications onto a permanent storage device (server, disk, or tapes) is an infringement of the right to reproduction.
- ***Maintaining an online Website of material pulled from other Websites without obtaining a license or permission to use the material:*** Instead, list URLs, link to the existing materials, or obtain permission to use the material. This is an infringement of the copyright holder's right of reproduction.
- ***Modifying an image taken from another source and loading it onto a permanent storage device (such as a disk, hard drive, or server):*** This may infringe upon the copyright holder's rights of reproduction, distribution, and adaptation (or derivative rights). If the work dates from after June 1, 1991, and is visual art, the usage may also infringe the copyright holder's moral rights under the Visual Artist's Rights Act.
- ***Using the concept of implied license to authorize publication and distribution:*** The concept of implied license is often used to justify certain kinds of publications that don't fall under fair use. Implied license is when a creator (who holds copyright) acts in such a way that you, as a reasonable individual, would assume you have permission to publish the piece. An example is when an individual writes a letter to the editor of a newspaper.

It has been normal practice for newspapers to publish these letters without seeking additional permission. Since most of the world knows about this practice, sending a letter to the editor grants implied license. Implied license doesn't justify new activities in the electronic realm, such as forwarding e-mail messages to individuals other than those to whom the creator sent the piece, copying messages from one electronic bulletin board and posting them on another, or similar activities.

Apply the concept of implied license cautiously. Just because your site is secure and password-protected doesn't make copying of materials without permission a fair use. Even on a secured site you still need permission to use copyrighted materials. If you have questions, contact the NPS solicitor.

- ***Removing "technological controls":*** Removing encryption used to protect copyrighted works or attached intellectual property rights management information from a file's metadata is a violation under the Digital Millennium Copyright Act (DMCA) for purposes other than fair use.
- ***Removing the name of author(s) from a work:*** This is a violation

under the DMCA and may be an infringement under the Visual Artist's Rights Act, if the work was created after June 1, 1991.

- **Deep linking (linking to a lower level of a Website rather than the site's home page):** This may also pose problems as the author's credit is obscured and the site content may change to potentially offensive material. Avoid links that create a commercial advantage to your site or that avoid providing credit to the linked site's creators and sponsors.

The Visual Artist's Rights Act partially protects these works. Follow the NPS Policy on linking.

- **Linking to another site without permission in such a way that the link implies a connection, endorsement, or authorization that doesn't exist:** In particular, NPS policy does *not* allow direct links to commercial sites.
- **Framing another Website's text via the use of a border, window, or frame:** This may be done only when you have that Website creator's permission in writing. Generally you must keep the original credit line, captions, and intellectual property rights management information on the site or you will be infringing the Website creator's rights to adapt or produce derivative works. See the case law of *Washington Post Co., v. Total News, Inc.* 1997.
- **Copyrighting a digital copy of an original work that is already copyright protected:** Case law from *Bridgman v. Corel* indicates that producing a digital file of an original work lacks sufficient creativity and originality to qualify as a copyrightable work.

16. *When do copyright protections become active?*

Under the Copyright Act of 1976, copyright protection becomes active the moment an item is placed in fixed form; for example, when a photographic negative is made, a document written, or a charcoal drawing first sketched. As a result of subsequent legislation, unpublished items no longer require a notice of copyright protection (the symbol ©, the author's name, and date) to be protected.

17. *If the park owns the material physically, doesn't it also own the copyrights?*

No, not necessarily. Physical ownership or possession of materials is *not* a useful indicator of ownership of corresponding copyrights. Check the accession document to see which of the following your park acquired:

- all copyrights, all rights, or literary rights in writing (See *MH-II*, Chapter 2: Accessions, for a sample accession document. Try to ensure that all rights, including all copyrights, are obtained by the park when you acquire materials for the museum collections.)
- written permission by the creator or his or her heirs to use the materials in limited circumstances for certain purposes
- no copyrights, as nothing was written about copyright in the accession document

18. *If the park doesn't own the*

Regardless of whether the request is internal or external, if you have no

copyright, but I want to use the materials in a publication, what do I do?

copyright or only limited permission to use copyright protected material, or if you doubt the person who granted you the copyright actually had it (for example, if the donor was not the creator or his or her heirs):

- You must **not** publish the work or grant permission to publish the work without obtaining permission, a usage license, or copyright first. Publication is the distribution of copies of a work to the public by:
 - selling or transferring ownership
 - renting
 - leasing
 - lending
 - sharing freely without restrictions
- Generally speaking, it is the researcher's responsibility to obtain permissions and rights. It is not your responsibility to tell the researcher how to do this, as you are not a copyright lawyer.
- If you want to determine the copyright status of a work, you should do the following:
 - Find out if and when the creator died.
 - Find out who owns the copyrights if they are still active (usually the creator or his or her heirs).
 - Make a good faith attempt to track down the creator or his or her heirs. (Cumulative international telephone directories on the Internet can help your search.)
 - Document your attempts to track down the creator or his or her heirs.
 - Request permission in writing to use the work when you locate the copyright holder. See Figure 3.5 for a sample use agreement.
- Once you find the copyright holder, explain why the material has value to your park and request, in writing, **all** copyrights.
- If the creator or his or her heirs won't grant you all copyrights, consider asking for a license or permission to use the materials for special purposes, such as on the Web, in park publications and exhibitions, and for scholarly external use. Be specific.

19. *When do I need to get copyright permissions?*

Get all necessary permissions **before** using or authorizing the use of the material in publications, in performances, through reproductions, or in derivative works. Derivative works are alternative or variant versions of a work based upon an original piece such as:

- postcards made from graphic or photomechanical prints, photographs, or paintings
- posters made from original photographs
- art work based closely upon existing original photographs or other art work
- exhibition captions that quote or paraphrase existing work

If you are asked to grant permission before you are certain of the legal status of the work **and** you want to do so, agree only to grant those rights that the NPS has (such as fair use), not all rights or permission to publish.

20. *What information do I need in order to obtain permission from the copyright owner?*

If you want to publish or distribute work protected by copyright that is held by another, you **must** obtain the permission of the copyright owner. Discover as much information as you can:

- Was the work created by a federal employee within the scope of his or her employment or by a federal contractor? If a contractor was the creator, what did his or her contract state about copyrights?
- Does your accession document specifically state that you received all copyrights? If not, revisit and update your accession procedures.
- Who created the work and is the creator alive? If not, when did the creator die? Generally, copyright lasts for the life of the creator, plus 70 years. Copyright belongs to the heirs of the creator for 70 years after the creator's death unless the creator has transferred it to another.
- Is it a joint work created by two or more authors? If so, it is protected for 70 years from the death of the last surviving author. You must find out which authors are living.

An actual public exhibition, display, or performance of a work isn't generally considered a publication. Offering to distribute copies of a work to the public for purposes of public performance, exhibition on the Web, or further distribution may be considered publication. Public distribution or the offer to distribute is key to determining if publication has occurred.

Consult the NPS solicitor on how to proceed.

21. *How do I know if material in my collection is still covered by copyright protection?*

The laws active before 1978 are complex. If you must act on copyright status, such as authorizing publication, you should see the NPS solicitor before making a determination. Here is a brief summary:

- Works produced before January 1, 1978:
 - If a work was published either anonymously or without a copyright

symbol before January 1, 1978, or was published before 1923, or had a single term of copyright protection (28 years) before 1963 with no renewal, the work is likely to be in the public domain.

Note: There is an exception for foreign works, which may have copyright restored after it lapses.

- If the work is unpublished and was not registered for copyright protection with the U.S. Copyright Office, but created before January 1, 1978, the work is protected for the life of the creator, plus 70 years or until December 31, 2002 (whichever is longer). If the work is anonymous or pseudonymous or a work of corporate authorship, it is protected for 120 years from the date of creation or at least until December 31, 2047.

In no event, will the copyright protections of unpublished and unregistered works expire before December 31, 2002. If the work is published for the first time before or on December 31, 2002, the term of protection won't expire before the life of the author plus 70 years or December 31, 2047, whichever is longer.

- You can check with the Copyright Office of the Library of Congress to see when the copyright expires, if the work was published before January 1, 1978. Usually the coverage was 28 years from the date filed, with one renewal possible.

In 1976, a separate legal act (17 USC 304) connected the old law and the new. This law gave automatic extensions of 47 years to materials in their initial 28-year term of copyright protection. This coverage was extended to 67 years in 1998 under PL 105-298. Materials in their first period of protection were given a total of 95 years of protection from the date of publication or 120 years from the date of creation, whichever is shorter. Under this law, renewal is optional, but it does provide some benefits.

- Works produced on or after January 1, 1978:
 - ***General copyright protection for works produced after January 1, 1978***, endures for the life of the author plus 70 years. If the work is of a corporate authorship, the protection lasts for 95 years from publication date or 120 years from creation, whichever is shorter.
 - ***Duration for joint works produced after January 1, 1978***, is measured from the death of the last surviving author plus 70 years.
 - ***Anonymous works, pseudonymous works, and works-for-hire produced after January 1, 1978***, are protected for the greater of 95 years from first publication or 120 years from creation.

Works published before March 1, 1989, must contain a notice of

copyright to be protected. Copyright notices usually consisted of the symbol © (or the word "copyright" or "copr."), the creator's name, and the date. Works published on or after March 1, 1989, do not require the notice, although most have it. Posting a notice gives the copyright holder certain additional benefits in the case of lawsuits if the work's copyright is infringed.

For more information on copyright duration, request Copyright Circulars 15, 15a, and 15t from the Registrar of Copyrights, Copyright Office, Library of Congress, Washington, DC 20559-6000, or call the hotline at (202) 707-9100.

When Works Pass into the Public Domain		
Date of Work	Protected From	Term of Protection
Created January 1, 1978, or after	The time the work first is fixed in a tangible medium of expression	Life of the creator plus 70 years (or, if work of corporate authorship, 95 years from publication, or 120 years from creation, whichever is shorter)
Published more than 75 years ago (Prior to 1925)	The time it was first published with a copyright notice or registered; now in the public domain	None
Published between 75 years ago and the end of 1963	The time it was first published with a copyright notice or registered	28 years protection for the first term and could be renewed for 47 years; in 1998, it was extended to 67 years for a total coverage of 95 years if renewed. If not renewed, it is now in the public domain
Published between 1964 and 1977	The time it was first published with a copyright notice or registered	28 years protection for the first term, and an automatic renewal of 67 years for the second term of protection in a total protection term of 95 years
Created before January 1, 1978, but not published	January 1, 1978, the effective date of the 1976 Act, which eliminated common law copyright	Life of the creator plus 70 years or until December 31, 2002 (whichever is longer). Or if the author's death date is unknown, 120 years from date of creation or until December 31, 2047 (whichever is longer). Many unpublished works by creators who died in 1929 or earlier or were created prior to 1879 are in the public domain.
Created before January 1, 1978, but published between then and December 31, 2002	January 1, 1978, the effective date of the Act, which eliminated common-law copyright	Life of the creator plus 70 years or January 1, 2048, whichever is greater.

Note: The above chart was adapted from a chart prepared in December 1996 by Laura N. Gasaway. The actual legal

date of publication is hard to determine in some cases. Consult the NPS solicitor if you have questions.

22. *What is the public domain?*

Works are in the public domain if they have no copyright protections, if their copyright protection has expired, or if they are ineligible for copyright protection. Any work prepared by a federal employee within the scope of employment is automatically in the public domain. To know if a work is in the public domain, you must know copyright coverage and duration. (See Sections C.7, C.8, and C.21).

Note: Be cautious when assuming a foreign work is in the public domain. In certain instances, works of foreign origin that once were in the public domain may have had their copyright protections extended.

23. *When is a work in the public domain?*

Work is in the public domain—available for general use without written permission or payment—when one of the following applies.

- It was created by federal employees as part of their official responsibilities. (Federal government work can't be copyrighted even though such work may appear occasionally in published volumes that are copyrighted. The federally produced portion of the material is not covered.)
- The copyright term has expired without renewal or restoration.
- Copyright protection never existed, such as when a work was published before 1978 without a required notice of copyright.

24. *How do I know if I have copyright to something?*

If you must know a work's copyright status for a NPS project, you must research it. Since copyright notice and registration aren't required for protection of unpublished works, you can't simply assume that works without a copyright notice are unprotected. Works are now protected from the moment the creator's pen is lifted from the finished work. Writing the U.S. Copyright Office may not be sufficient to establish the copyright status of collections of paintings, sculpture, photographs, personal papers, assembled manuscript collections, and similar materials created outside federal agencies.

For example, the copyrights to all letters written to the government by a private citizen are held by the private citizen, even though the documents are owned and managed by the government. To obtain permission to publish, electronically distribute, or exhibit these letters, you must determine if the letters are under copyright protection (a function of who produced them, whether they were registered or published, and when), find the copyright holder, and obtain written permission to use the letters. For further guidance on determining copyright ownership and duration, see Questions 21 and 22 above.

25. *What can I do with park collections if I'm uncertain the park has the copyrights?*

Copyright is a use, not an access, restriction. Subject to privacy or other applicable laws, anyone may look at the material at any time for research, study, private scholarship, satire, parody, criticism, and news reporting. Copyright allows limited nonprofit copying of small portions of copyrighted materials, *if the copying qualifies as fair use under the new guidelines*. Copyright also allows copying for security, preservation, and deposit in

another institution. This is called fair use. See Sections C.11 and C.12 for information.

26. *What should I do if I'm uncertain of the copyright status of a work and the fair use quality of a reference request?*

Don't grant permission to:

- publish
- distribute
- reproduce
- produce derivative works from the original item

Never authorize public distribution, public performance, public display of multiple copies, or alterations or production of derivative works or publication in writing unless you are absolutely certain that:

- you have the copyrights, ***or***
- the copyrights have expired, ***or***
- the copyrights never existed (as with government works), ***or***
- the copyright holder has granted you a written site license or permission to use the work, which allows you to grant permissions to others.

When a copyright holder grants nonexclusive permission to use a copyrighted work to “all educational organizations” or some similar statement that automatically authorizes all uses of that kind. You don’t need a special written agreement from the copyright holder to use the work for that purpose if there is a blanket nonexclusive license or permission for that purpose. All you need to do is to obtain a copy of the general license authorizing the use.

Tell the requester he is responsible for obtaining the rights and permissions from the copyright holder, which is not necessarily the NPS.

You should also:

- Ask the requester to sign a researcher registration and duplication form and a copyright and privacy restrictions statement. See *MH-II*, Appendix D: Museum Archives and Manuscript Collections, Figures D.14-D.16.
- Inform the requester that by signing the copyright and privacy restrictions form, he or she has indemnified your park.
- Place a warning concerning copyright restrictions in your research room and on your own copy machine (see Section C.14 for the the statement).

Contact the NPS solicitor and regional/support office (SO) curator about copyright questions. You can also contact the Volunteer Lawyers for the Arts and the solicitor of your local state library, archives, or museum for additional information (but not for legal opinions). Work with legal professionals.

27. *Can copyright be restored once it has lapsed?*

Yes. Despite the combined resistance to such legislation by archivists, librarians, and curators, several recent trade agreements have provisions for restoring copyrights for some motion pictures and sound recordings.

- ***The North American Free Trade Agreement Implementation Act*** provided copyright restoration for certain motion pictures created or published in Mexico or Canada if they entered the public domain in the U.S. because they were published between January 1, 1978, and March 1, 1989, without a required copyright notice.
- ***The Uruguay Round Agreements Act (17 USC 104a and 109)*** restores some foreign copyrights in foreign work in the public domain in the U.S., including art, literature, and sound recordings fixed before February 15, 1972, if the works were protected in their source country on January 1, 1996.

More such copyright restoration legislation may be in the works. Read your professional journals and newspapers or watch the legal Websites listed in the bibliography for updates.

D. Patent Laws

1. *What are patents?*

Patents (U.S. Constitution, Article I, Section 8 and 35 USC) are a form of intellectual property protection for designs, inventions, machines, materials (chemical compositions), and processes (but not natural processes). Patents are authorizations granted by the government to inventors and/or their employers to exclusively produce, sell, or use an invention within the United States.

2. *How do patents protect inventions?*

Patents prohibit individuals other than creators of an item from making, using, selling, or offering for sale patent protected designs, inventions, materials, and manufacturing processes in the United States.

3. *What can be protected by patents?*

Inventions, such as designs, machines, objects, materials, and manufacturing processes can be protected by patents. Ideas, suggestions, and natural or physical processes may NOT be patented.

4. *How do patents affect museums and scholars?*

Patents have relatively little impact on museums. There are no restrictions on viewing, exhibiting, or documenting patented items. In fact, once an item is patented, anyone may request and purchase detailed drawings of the patented item from the U.S. Patent Office. However, museums may ***not*** make working replicas or 3-D reproductions of patented items without permission from the patent holder.

5. *What is the period of patent protection?* Designs are protected for 14 years, while machines, materials, and processes are protected for 20 years from the date of the patent application.

E. Trademarks and Servicemarks

1. *What are trademarks?* Trademarks are brand names, symbols, logos, and/or words used by businesses to identify their products. Businesses create trademarks so that their products can be easily distinguished from their competitor's products.
2. *How are trademarks different from servicemarks?* Trademarks appear only on products as indications of the source of goods. Servicemarks are used to distinguish the sources of services. Both measures are “branding” tools that indicate sources and qualities of either goods or services provided by corporations or groups.
3. *Why do businesses have trademarks and servicemarks?* Trademarks and servicemarks protect the reputation of a company and make it easy to distinguish a company's products and services from those of competitors. Use of a trade or servicemark serves the purpose of crediting the group that created the object or offered the service, keeping others from claiming credit or misleading potential customers as to the type or quality of materials and services offered.
4. *How do trademarks and servicemarks affect museums?* Generally trademarks and servicemarks affect museums most when the museum decides to trade or servicemark its own products or services, such as museum store or restaurant operations. The NPS can't manage such shops or restaurants. ***Staff should be aware that the NPS protects the NPS and DOI logos as if they were trademarks.***
- Note:*** Museums are not prohibited from publishing, performing, exhibiting, or otherwise using materials that contain trade or servicemarks.
5. *Must I register for trademark and servicemark protection?* No. As soon as an organization uses a distinctive mark regularly and consistently the organization has common law trademark and servicemark protection. However, the mark must be distinct from that of other organizations and the museum must be the first organization to use that mark.
- If another organization can provide prior use, ownership, or a significant amount of consumer confusion as to the ownership or source of the mark, the mark's validity can be revoked or ownership can be reappraised. Federal registration grants additional rights in case of a legal conflict. Many states also offer some form of trademark and/or servicemark protection.
6. *How long do trademark or servicemark protections last?* Trademarks and servicemarks registered prior to November 16, 1989, are protected for 20 years; while those subsequently registered are protected for 10 years.
-

F. Freedom of Information Act

1. *What are the Freedom of Information Act (5 USC 552) and the state Sunshine laws?*

The Freedom of Information Act (FOIA) provides citizens with information on their government's actions through unrestricted access to the documentary records of those actions, such as policy files. Sunshine laws, which exist in some states, do the same for state records. FOIA indicates what federal holdings, including NPS museum collections and materials under records management control, must be made accessible by law.

2. *How does FOIA affect park museum collections?*

FOIA requires that NPS staff and other federal government agencies provide the public swift access to certain governmental records upon request, regardless of other priorities or the effect of sharing such information (with certain exemptions).

FOIA involves a quick response to information requests that include:

- determining if the requested material exists
- locating the appropriate materials
- determining whether they fit FOIA exemptions
- responding to the FOIA request within 20 days of receipt

3. *What must I provide under FOIA?*

In general, you must provide:

- any documents or records already provided to outside users, such as the public, Congress, or the courts. Once provided, these materials are public records, available to all requesters
- any documents in federal collections or custody, except those listed as exemptions in Question 4 below

Many organizations have found World Wide Web sites to be a cost-effective way of providing access to commonly requested information.

FOIA gives the public access rights to government records and documents. FOIA doesn't apply to museum objects other than archival materials and museum records.

4. *What don't I have to provide under FOIA?*

You don't have to conduct original research to answer FOIA requests. Provide only existing documents and records. You don't have to create records where none exist. Some federal records are legally exempt from FOIA requests. The FOIA exemptions include:

- matters of national defense, foreign policy, or intelligence (classified records)
- internal personnel rules and practices
- trade secrets, commercial, or financial information that might help a

competitor

- privileged interagency or intra-agency memoranda or letters
(*Note:* As currently interpreted by the courts, this exemption is rarely applicable. Don't count on a request for a privileged interagency or intra-agency exemption being upheld.)
- personal information affecting an individual's privacy, such as medical, psychiatric, or employment records
- records compiled for law enforcement
- records of financial institutions
- geological and geophysical information concerning wells
- materials protected by other statutes, such as the Archaeological Resources Protection Act, which restricts the provision of site location information and the nature of archeological resources and shipwrecks

Check with the NPS solicitor, the affected park staff (for example, cultural or natural resource managers), the FOIA officer, the superintendent, and the regional public relations officer and regional/SO curator before filling a FOIA request for the following sensitive information:

- location of nesting sites or other habitat information of threatened and endangered species, consistent with the Endangered Species Act (16 USC 1531 et seq.). See Section F, Question 14.
- museum collection storage location and appraisal and insurance values
- donor or lender addresses
- draft research and publications that haven't yet been completed, particularly scientific findings
- location information for paleontological sites

Such information *may* be released under FOIA on a case-by-case basis. If you get such a request, immediately contact the NPS solicitor and the FOIA officer.

The Executive Order on Sacred Sites is NOT a FOIA exemption. A FOIA request for information protected under this Executive Order should be brought to the attention of the NPS solicitor, but probably will need to be supplied as requested.

5. *What do I do if I receive a FOIA request?*

- Alert your superintendent, then work with your park or FOIA officer to develop an immediate response.
- Be aware that the NPS solicitors must approve any denial of

information, including the removal of a single word from a document unless the deletion is classified as an exemption. Removing a single word (redacting text) is considered a denial unless the deletion is classified as an exemption, even if the rest of the document is supplied.

- Provide the required documentation to the requester within 20 days, unless the request fits one of the exemptions listed above.
- If you are unsure if you should fill the FOIA request, discuss this with the FOIA officer, the regional/SO curator, and the regional public affairs officer immediately. A response letter stating that the application is under review must go out within 20 days of receipt of the request.
- If the material requested is non-federal, such as a non-federal partner's records, promptly alert the partner to the request to allow the partner a chance to object to the information release.

G. Privacy and Publicity Legislation

1. *How does privacy legislation (5 USC 552) affect park museum collections?*

Federal and state privacy laws protect living private individuals by giving them a legal right to be left alone without intrusion into their personal affairs. There are four components of privacy protection:

- ***protection from public intrusion*** on a private living individual's personal or private life
- ***protection from public disclosure of private, potentially embarrassing information***, such as medical, legal, or counseling information
- ***protection from the circulation of misleading information*** about a private living individual or the placing of true information about the private living individual in a misleading light that implies something that is not true about the individual
- ***protection from the use or appropriation of a private living individual's name or likeness*** by another, particularly for gain

Privacy protections are not absolute and without limits. To be judged illegal, a usage must be distasteful, embarrassing, or objectionable to a person of normal sensibilities. Public figures are generally judged to have a lesser right to privacy protections as they have a lesser expectation of privacy. Unlike copyright, an individual's right to privacy ends at death.

The level of protection applicable to a situation may vary. Documentation of private living individuals produced when an individual has an expectation of privacy, such as in their own home, is the best protected. Documentation

of the same individual produced in a public arena might be treated differently by the courts. For example, a photograph taken while the same private person was walking in a public visitors center in a park, is generally somewhat less well protected (as the individual had a lesser expectation of privacy) than a similar image taken in a private locale (where the person had a greater expectation of privacy).

Privacy legislation is an exemption to FOIA. Private information is not provided even when you receive a FOIA request for the information.

Practically speaking, privacy legislation stops museums from publicly disclosing private data. Privacy legislation also limits how museum staff may provide access to certain documentation on private, living individuals including:

- medical and psychiatric records
- employment records
- legal records
- oral and video histories (transcripts and tapes)
- photographs (including portraits, candid shots, and images of private residences)
- motion pictures (including amateur and professional footage, both posed and candid)
- video and audio tapes (including amateur and professional footage, both posed and candid)

To use materials that document private, living individuals, you must obtain signed release forms or permission statements from the documented individuals. Obtain releases from both interviewees and interviewers ***prior*** to allowing access or publication. Without the release forms, your park may be subject to lawsuits for invasion of privacy.

Special areas of concern for privacy issues are:

- ***material that intrudes on one's seclusion*** or private affairs
- ***any material usage that publicly discloses private information***
- ***material that places a person in a misleading or false light***; for example, a published statement that implies an individual was wealthy, a spy, a police officer, or a criminal when the individual was none of those things
- ***any material that places a private individual in an embarrassing situation***

- ***any material that contains nudity*** (whether of adults or children)
- ***any commercial use of private information***

For all of these materials, obtain permission from the subject.

Remember, fair use applies only to copyright and ***not*** to publicity and privacy claims. Your researcher duplication form should include an indemnification statement that the researcher must sign agreeing to pay all court and legal costs in case of a lawsuit. See *MH-II*, Appendix D, Figure D.14, Researcher Duplication Form.

As with copyright, the burden of obtaining the permission to use private information is on the researcher. You must notify the researcher in writing (such as on your researcher registration and duplication forms) that he or she is responsible for obtaining the necessary permissions from the individuals documented before the park can grant access to the private data. If the documented individuals refuse to grant permission, or the researcher is unable to locate them to obtain permission, don't grant access or permission to use the material until all private individuals documented in the materials are deceased. If the material contains nudity, misleading information, embarrassing material, or private records (such as employment, medical, psychiatric, or legal records) on person no longer alive, restrict access until you can obtain permission from the heirs or consult with a NPS lawyer.

2. *Who has little or no right to privacy?*

According to past court rulings in most states, the dead have no rights to privacy. In many court cases, famous people have been judged to have less than full right to privacy, including:

- movie and TV stars
- famous singers and musicians
- well-known criminals
- other well-publicized individuals

In the case of famous individuals, it is wise to take a conservative approach to avoid lawsuits. Request permission to use materials that may be construed by the courts to be private from all living individuals, even if the individual portrayed is famous.

3. *What is covered under the right to privacy?*

Generally, the right to privacy provided by state laws protects private, living individuals from intrusion, including:

- ***audio- and videotaping*** of their conversations
- ***photographing, filming, or taping*** of the person or home
- ***public disclosure of private information***, such as:

- medical and psychiatric history
- personnel records and employment history
- confidential lawyer-client and clergy-client discussions
- information that embarrasses an individual, even though the information may be true
- information that places a person in a false light or an untrue or misleading situation

Note: This is similar to defamation laws (also known as libel and slander laws), although in libel and slander laws the individual is protected only from the disclosure of information that is both false and willfully misleading. Unpleasant but true information may not be defamatory, although disclosure of that information may be an invasion of privacy, depending on the facts of the case. For more information, see Section G.9.

The right to privacy also includes freedom from having anyone else use any aspect of your persona or your information for gain, including your:

- name
- face
- nude image (adult or children)
- fingerprints
- house (images)
- private words

4. *May I provide private information for fair use, such as education and research?*

No. Privacy is an access as well as a use restriction. ***No fair use clause allows access to private information in most states.*** Researchers may not have access to private information about other private, living individuals for the following reasons:

- The general public has no legal right to private information about individuals other than themselves.
- Only subpoenas and audits can force federal staff to produce private information.
- FOIA has a privacy restriction to ensure private information is not wrongly provided as the result of a FOIA request.

5. *How does privacy law affect museum or archival collections?*

Two broad categories of museum materials often pose privacy problems:

- oral and video history tapes and transcripts without signed release forms from all participants, both the interviewers and the interviewees
- photos, video tapes, digital files, and motion picture film footage without signed release forms from all individuals shown

Don't provide these materials unless you have signed release forms or permission statements from the individuals (interviewees and interviewers) documented in the tapes, transcripts, files, and other documents.

If you are involved in creating oral or video histories, consider getting an oral release statement on the tape itself from both the interviewer and the interviewee at the start of the interview. Have a formal release signed by both parties once the tape has been recorded and transcribed and edited by the interviewee. Once the transcript is prepared have both the interviewer and the interviewee sign a separate release form for the transcript.

6. *How do I avoid rights problems when producing new products, such as photos?*

Have all private individuals who are taped, transcribed, filmed, or photographed sign a release form giving you all copyrights and written permission to use this material in any way you wish (also called a release form). See Chapter 3, Figures 3.6 and 3.7 for sample release forms.

Documenting federal staff during work hours may not be a problem, if this is considered part of the documented person's job. For example, videotaping interpretive rangers for training purposes may be considered part of their job. To minimize risk, obtain a signed release form from all individuals shown or recorded. For release forms see Figures 3.6 and 3.7, Model Release Forms in MH-III, Chapter 3, Publications.

If a private individual gives you permission to use material in one setting, such as an interpretive slide show, ***don't*** assume that you may use it in another setting, such as on the World Wide Web or in another publication, without getting additional permission. You must either have the individual sign a general release form, or receive written permission for each new use.

7. *How do I avoid rights problems when using old photographs and related materials?*

Obtain written permission from the rights holder. You or your researchers may need to obtain multiple permissions to use a single work within your collections in publications or exhibitions. The risk of violating the right of privacy is minimal in the case of a celebrity or public official because both seek public attention and voluntarily live in the public eye.

The right of privacy tends to relate more to private persons because they generally do not seek public attention. A private person may lose protection if the individual becomes the subject of newsworthy attention; this balances privacy interests with First Amendment concerns.

8. *What should I do if I have materials without signed releases?*

You can take the following steps to protect your park:

- ***Inform researchers they must obtain permission from the relevant***

individual(s).

- ***Follow the NPS records schedule in the Records Management Guideline*** (formerly NPS-19) to transfer or dispose of employment, law enforcement, medical, and similar records as required by law. Most records with privacy issues in the NPS are official records, such as employment and medical records, and shouldn't become part of museum collections, but instead should go to the National Archives and Records Administration (NARA). For records of related organizations, such as concessionaires, don't make personnel, medical, psychiatric, or law enforcement materials available unless the persons involved are no longer living and/or you are forced to do so by FOIA, federal audit, or a subpoena.

Even when the individual documented is deceased, you have to judge what problems the records might cause relatives of the individual. For example, personnel records might indicate psychiatric or medical histories that the family does not want to share with the public. It is legal to hold such materials on related organizations as long as they aren't official records, ***although it may be unwise***. These decisions should be made on a case-by-case basis during the appraisal process ***prior*** to accessioning.

- ***Don't provide access to medical, legal, psychiatric, personnel, or other private records***, except for FOIA, subpoenas, and federal audits. Requests for employee records found in corporate archives or personal papers within NPS collections, such as the Thomas A. Edison or Frederick Law Olmsted papers, should be referred to your solicitor, administrative officer, and, where appropriate, FOIA officer. Records of living federally employed individuals should be in the personnel office, not the museum collection. Refer all such requests for records of federal employees to your administrative officer, through your superintendent.
- ***Talk to the NPS solicitor and your FOIA officer*** about potentially private materials. Be conservative with private information. Don't allow use of these records without the NPS solicitor's approval.
- ***Don't provide access to or publish, exhibit, distribute, or authorize others to use this potentially private material*** particularly in publications, exhibitions, or other public distributions, such as the World Wide Web, without the subject's permission (even if the individual documented was a child when the materials were produced).
- ***Consult with the appropriate discipline specialist if the materials document a particular culture, but you can't locate the individuals documented***. Working with the anthropologist or ethnographer, contact the appropriate cultural group to identify the individuals documented, obtain permissions, and determine if the use is appropriate.

See Chapter 1: Evaluating and Documenting Museum Collections Use, Section E, Cultural Issues.

9. *How do the courts enforce state privacy laws?*

Each case is decided on its own merits. Generally speaking, state and federal courts are particularly hard on any uses that:

- place a private person or group in a misleading light
- embarrass a private person or group
- include any nudity
- result from intrusion on private space or affairs
- disclose medical, psychiatric, employment, or related information

Privacy is a hot-button issue that can lead to a public firestorm of protest. Err on the side of protecting privacy.

10. *What is the difference between publicity and privacy laws?*

Publicity legislation, which exists in almost half the states, protects the rights of celebrities to benefit from any use of their name, face, image, voice, and other aspects of their image or persona for commercial gain. These state laws, which apply to federal entities within the state, limit commercial use of museum objects that illustrate or capture the image, voice, or persona of celebrities without permission of the celebrities portrayed or their estates.

State privacy legislation overlaps somewhat with publicity legislation enacted by such states as California, New York, and Tennessee. Both privacy and publicity legislation are state laws that may vary in content from state to state. These laws apply to federal collections within the states.

Two major differences exist between privacy and publicity legislation:

- Privacy is a non-commercial right (meaning *all* uses of private information are illicit), while publicity is a commercial right (meaning commercial or for-profit uses are forbidden).
- In some states, publicity rights extend after death and may be enforced by the estates of celebrities, while privacy rights always end at death.

Whether and how the publicity right applies depends on the applicable state law—some states do not recognize it, and no federal law applies. However, the number of states recognizing some version of publicity law is growing rapidly. NPS staff should seek written permission from celebrities or their families (some states extend the right for a period after death) for all NPS uses of their persona, particularly if a proposed use is more commercial than educational. If a researcher wishes to use such materials, don't authorize such use until the researcher has obtained written permission from the celebrity.

11. *How do I know if use is potentially illegal?*

First, read this chapter. Then consult with the NPS solicitor and regional/SO curator for guidance if you feel a usage may be illegal. In general, obtain written permission to use the material from celebrities or their heirs, particularly for all commercial uses to avoid potential lawsuits.

12. *How does publicity legislation affect park museum collections?*

Parks in states with publicity legislation should be aware that they must be particularly careful how they use images of celebrities, living or dead. Avoid authorizing such use in writing unless the researcher has obtained written permission from celebrities or their estates. Discuss all commercial or electronic uses of celebrity-related materials with NPS solicitors and regional/SO curators.

H. Other Legal and Sensitive Issues

1. *What is obscenity, and how does it concern museum collections?*

Obscenity is indecent, lewd, or offensive expression. There are state and federal criminal penalties for those who provide obscene material to the public. Laws and standards dealing with obscenity vary by state. Generally, the following are obscene:

- **Nudity**, particularly in photographs, is often judged to be obscene by state and local courts. Nude images of children are particularly inflammatory according to recent legal rulings. Don't publish nudes of children unless they are essential to your work and you have cleared the use with the NPS solicitor and your regional/SO curator.
- **Visual depiction of a minor engaged in sexually explicit conduct**, including "lascivious exhibition of the genitals," should **not** be reproduced, exhibited, or distributed (such as on the Internet) without first obtaining the consent of the NPS solicitor and consulting with an appropriate discipline specialist. Criminal penalties for child pornography make it advisable to avoid exhibiting, publishing, or distributing depictions of nude children, even if disseminated for academic purposes. Dissemination of an image (not just the solicitation of a minor to pose for such images) may result in criminal penalty, even in the absence of any commercial purpose.

2. *What pictures of nudes are exempt from obscenity concerns?*

Practically speaking, none are exempt although educational, medical, or scientific images disseminated for legitimate academic purposes are less likely to be judged sexually explicit. For example, facing a court challenge for displaying a Renoir nude in a fine art museum is unlikely. An equivalently posed nude taken as a contemporary color photograph and distributed online without context is more likely to receive an obscenity challenge.

If, however, the photo is the source material for a painting held by the NPS that is being critically studied in the publication, the danger again recedes. Handling concerns of this nature is a matter of risk management and should be done in conjunction with a NPS solicitor familiar with these concerns.

3. *How can I manage nude*

If your collections or potential donations contain images that depict nudity,

images that I have in my collection?

consider consulting a group of discipline specialists. An informal, professional advisory group can substantively evaluate the artistic, scientific, or educational merit of disseminating particular materials and ensure that all delicate matters and culturally sensitive materials are presented appropriately.

Such good-faith efforts will stand you in good stead if you are ever taken to court. Your access and use policy should recognize these issues, require an evaluation of the reason for and merit of disseminating sensitive images, and direct staff to consult with the NPS solicitor for assistance.

4. *How does evolving case law affect my practices?*

Case law can totally change the meaning of an act or how a piece of legislation is interpreted. Case law, unfortunately, is fluid and changes rapidly. You can learn about recent changes by reading professional museum publications, the curatorial bulletin board on cc:Mail, a major newspaper, and by consulting with the NPS solicitor.

5. *How do donor restrictions affect use?*

Prior to 1984, parks were advised that donor letters should contain a statement that gifts are unconditional. (See *Manual for Museums*, Chapter 2, How to Acquire.) Since 1984, NPS policy, as noted in *MH-II*, Chapter 2: Accessions, Figure 2, Deed of Gift, is to accession only unrestricted donations. Although counter to NPS policy, some materials may have been received with donor restrictions. If you discover materials within your collection that have donor restrictions, honor them to the extent allowed by law.

The NPS must follow FOIA procedures and may not deny materials requested through FOIA or subpoena automatically because of donor restrictions. Occasionally, FOIA and donor restrictions clash, with FOIA requiring access to materials that are denied under donor restrictions. When donor restricted materials are requested under FOIA, the case must be decided individually. Ask your superintendent, NPS solicitor, FOIA Officer, and regional/SO curator for guidance.

One piece of case law that supports a donor restriction over a FOIA request is the 1995 case, *Kats v. National Archives and Records Administration*, in which the courts denied a FOIA request for the John F. Kennedy Papers based on prior donor restrictions. Work with the NPS solicitor and FOIA officer to determine how to proceed.

6. *What is meant by sensitive information?*

Sensitive information is privileged, exclusive, private, or restricted information that isn't protected by law(s). Restricting access to such information rarely has any legal basis. On occasion, donor restrictions may apply. Donor restrictions act as a binding contract between the museum and the donor. (Refer to Section G.5.)

Honor restrictions to the extent permitted by law. In the absence of a donor restriction or a legal basis, sensitive information must be provided when requested by FOIA. Contact the NPS FOIA officer and solicitor for guidance. For more information see Chapter 1, Section D, Ethical Issues, and E, Cultural Issues.

7. *What slander and libel*

State defamation law generally provides recourse for publication

*laws affect use of
museum collections?*

(communication to a third party) of *false* written (libel) or spoken (slander) remarks that hold *living* persons or corporations up to hatred, contempt, or ridicule. Most state defamation law doesn't apply to the dead, allowing unlimited commentary without recourse. The medium and method of communication can sometimes affect whether a statement is viewed as defamatory or not.

Materials most frequently affected by slander and libel laws are:

- oral and video history tapes and transcripts
- correspondence, particularly informal correspondence, such as memos and e-mail
- diaries

Of these materials, the most likely to pose problems for park museum staff are back-up tapes from e-mail systems requested via FOIA and oral and video history tapes and transcripts. If you have such materials that contain defamatory content, work with your regional archivist or regional/SO curator. If you receive FOIA requests for this material, also contact your park and SO FOIA officer and the NPS solicitor.

8. *Do restrictions for
National Defense, Foreign
Policy, and Classified
Data affect museum
collection use?*

Yes, particularly former military installations such as forts or bases, may encounter this problem. If you find classified, national defense, or foreign policy documents or objects in your collections marked with restrictions, replace them with a separation sheet or “object temporarily removed” tag, lock up the originals, and contact the NPS solicitor and your regional/SO curator. They can help you determine how to contact the appropriate government agency for declassification or review, regardless of the document's age. See *MH-II*, Appendix D, Figure D.5, for separation sheets.

9. *Where are the restrictions
for access to internal
personnel rules and
practices?*

Refer requests for information concerning internal personnel rules and practices to your administrative officer. If the request is a FOIA request, also check with your FOIA officer, superintendent, and regional public relations officer. In general, policy documents are provided upon request under FOIA.

10. *How does the Archaeo-
logical Resources
Protection Act (ARPA) of
1979 (16 USC 470) affect
use?*

ARPA defines archeological resources as material remains of human life or activities that are 100 or more years old and capable of supporting humanistic or scientific studies of past human behavior and cultural adaptation through the application of scientific or scholarly techniques. In particular, ARPA protects archeological resources—such as sites, field records, Geographic Information Systems and Global Positioning System documentation, databases, maps, notes, documentation, and location-notated objects—on public and Indian lands by:

- requiring that information on the location and nature of archeological resources remain confidential if disclosure might harm the resource
- requiring permits for studies
- establishing penalties for damage, excavation, or removal of resources

without a permit

- requiring that resources excavated on public land have all resulting materials preserved with their associated records in a suitable repository
- giving the Secretary of the Interior authority to issue regulations for the proper curation of federally owned and managed archeological collections

11. *How does the National Historic Preservation Act of 1966, as amended (16 USC 470-470t, 110) affect use?*

In Section 304, the National Historic Preservation Act provides:

"Authority to withhold from disclosure . . . to the public, information about the location, character, or ownership of historic resources if the disclosure may:

(1) cause a significant invasion of privacy

(2) risk harm to the historic resource; or

(3) impede the use of a traditional religious site by practitioners"

The types of information that can be withheld according to a written opinion by Jerry Rogers, NPS Associate Director of Cultural Resources, in an October 18, 1993, letter to F. Dale Robertson, Chief of the U.S. Forest Service, includes:

- **location information** that identifies where a historic property was constructed or where a historic event occurred
- **character information**, such as the combination of qualities or features that make a resource significant, for example archeological artifacts or architectural ornamentation, which could attract theft or vandalism
- **private ownership information**, such as the owner's address

Don't attempt to answer FOIA requests on your own; refer all such requests, whether written or oral, to the superintendent, administrative officer, and designated park FOIA officer. You may be asked to collect response data or to draft a response for the Superintendent's signature. Before providing information on collection storage location, appraisal and insurance values, or the donor or lender's address to fill a FOIA request, check with the NPS solicitor. Such data may be released under FOIA on a case-by-case basis.

If you receive a request for information you wish to protect under this law, first check with your superintendent, regional public relations officer, and FOIA officer and the NPS solicitor, then follow the FOIA denial procedures. Write to the requester within 20 days, indicating the request is being denied under the National Historic Act Preservation Amendment.

12. *How does the Executive Order 13007—Indian*

The Summary of Draft Management Guidelines for carrying out this Executive Order states, "where appropriate, agencies shall maintain the

Sacred Sites (May 24, 1996) affect use?

confidentiality of sacred sites.” Staff members are encouraged to collect and maintain information at the minimal level of detail necessary to justify administrative decisions. Respect any tribe's reluctance to reveal location information on sacred sites, particularly in documentation.

Because of FOIA, you can't protect this information from public access. Bring FOIA requests for this sacred site location information to the attention of the NPS solicitor, as well as the FOIA officer, the regional public relations officer, and regional/SO staff. Current NPS solicitor opinion is that FOIA overrides the Executive Order protections, making it necessary to honor FOIA requests for sacred site location information.

13. *How does the Federal Cave Resources Protection Act of 1988 (16 USC 4301-4309) affect use?*

The Federal Cave Resources Protection Act states that federal cave location information may not be made available to the public unless the Secretary of the Department of the Interior determines that further disclosure would serve departmental purposes and **not** create a substantial risk of harm, theft, or destruction of the cave.

The DOI Secretary may make information available regarding significant caves upon written request by:

- federal and state government agencies
- bona fide educational institutions
- research institutions

If you receive a request for information you wish to protect under this law, such as federally-protected cave location information, first check with your superintendent, regional public relations officer, FOIA officer, and the NPS solicitor, then follow the FOIA denial procedures. Write to the requester within 20 days, indicating that the request is being denied.

14. *What do I need to know about the National Parks Omnibus Management Act of 1998 (PL 105-391)?*

The National Parks Omnibus Management Act of 1998 addresses information in two ways:

1. It “*ensure(s) appropriate documentation of resource conditions in the National Park System for study to the benefit of park management as well as broader scientific value...to encourage the publication and dissemination of information derived from studies in the Nation Park System.*” and

2. “*Confidentiality of Information. Information concerning the nature and specific location of a National Park System resource which is endangered, threatened, rare, or commercially valuable, of mineral, or paleontological objects within units of the National Park System, or of objects of cultural patrimony within units of the National Park System, may be withheld from the public in response to a request under section 552 of title 5 [FOIA)], United States Code, unless the Secretary determines that (1) disclosure of the information would further the purposes of the unit of the National Park System in which the resource or object is located and would not create an unreasonable risk of harm, theft, or destruction of the resource or object, including the individual organic or inorganic specimens; and (2) disclosure is*

consistent with other applicable laws protecting the resource or object.”

If you receive a request for information that falls under this category, such as the location or nature of botanical or paleontological specimens that are threatened, endangered, rare, or commercially valuable, you may withhold this information.

You may also restrict information concerning objects of cultural patrimony. Objects of cultural patrimony are any items that have been identified by the NPS as having importance for archeology, history, ethnography, literature, art, physical or natural sciences, or culturally affiliated groups. This definition includes, but is not limited to, the definition of objects of cultural patrimony used in 25 USC 3001-3013 for certain objects associated with Native American groups or cultures.

If the request comes as a FOIA request, contact your park FOIA officer, regional/SO curator, the NPS solicitor, and, as appropriate, the park's natural resource manager and the WASO threatened and endangered species coordinator. Work with these professionals to discover if the request can be denied under the National Parks Omnibus Management Act of 1998 confidentiality provision. The FOIA officer will make the decision on a case-by-case basis. For information, see Chapter 1, Section F, Scientific Issues, and 36 CFR Part 80.

Figure 2.1. Access and Use Legal Issue Action Chart

Access and Use Legal Action Chart		
Type of Request The Researcher (NPS or External) asks for . . .	Applicable Legislation or Restrictions	Appropriate Action You, as Park Staff, should . . .
<p>Any work (published or unpublished) produced by NPS staff or other federal employees as part of their normal work, including:</p> <ul style="list-style-type: none"> • artworks • audiotapes • field notes • photographs • published and unpublished writings • reports • research notes • videotapes <p><i>Note:</i> NPS contract work may also fall in this category depending upon the terms of the contract. See Section C.7.</p>	<ul style="list-style-type: none"> • Privacy • Publicity • FOIA • Obscenity and Pornography • Slander and Libel • Cultural restrictions • Ethical restrictions • Archaeological Resources Protection Act • National Historic Preservation Act • National Parks Omnibus Management Act of 1998 • Visual Artist's Rights Act 	<ul style="list-style-type: none"> • Allow the researcher to use the work without copyright restrictions as all federally produced work is in the public domain, as long as there are no other restrictions (cultural, ethical, or legal restrictions). • Credit all works appropriately to the correct creator. • Instruct the researcher in writing to obtain written permission (also called a release) from any private non-federal individuals illustrated, taped, or documented before copying, publishing, distributing, preparing derivative works, or exhibiting. • Instruct the researcher in writing to obtain written permission from a celebrity or a celebrity's estate <i>before</i> using the material commercially or in a publication. • Contact your superintendent, regional public affairs officer, regional/SO curator, and FOIA officer immediately if the reference request comes via FOIA. • Review the publication context with subject specialists and the NPS solicitor <i>before</i> allowing publication of any images of nudes or potentially defamatory materials. • See archeological research below.

Access and Use Legal Action Chart		
Type of Request The Researcher (NPS or External) asks for . . .	Applicable Legislation or Restrictions	Appropriate Action You, as Park Staff, should . . .
<p>Any work held by NPS museum collections that has a donor restriction</p> <p><i>Note:</i> NPS policy (as noted in <i>MH-II</i>, Chapter 2, Deed of Gift) is to accept only unrestricted gifts. The NPS will honor existing donor restrictions to the extent permitted by law.</p>	<ul style="list-style-type: none"> • Donor restriction • FOIA • Cultural restrictions • Ethical restrictions • Possibly copyright 	<ul style="list-style-type: none"> • Check for donor, cultural, ethical, and legal restrictions <i>before</i> providing access. • Honor restrictions to the fullest extent allowed by the law. • Consult with the NPS solicitor to determine to what extent the law allows you to honor the restriction. Also speak to your regional/SO curator and any associated groups. • Consult with your superintendent, regional public affairs officer, regional/SO curator, and FOIA officer if the reference request comes via FOIA. You <i>must</i> respond to the FOIA request within 20 days. • Ensure the researcher signs a researcher registration form and a copyright/privacy statement <i>before</i> authorizing use. (See <i>MH-II</i>, Appendix D, Figures D.15 and D.16.)
<p>Moving or still audio-visual images or recorded words of living recognizable people or celebrities (living or dead) taken by individuals other than NPS staff including:</p> <ul style="list-style-type: none"> • audiotapes • electronic audio/video files • motion picture recordings • oral history audiotapes • oral history transcripts • still images, including photographs • video history videotapes • video history transcripts 	<ul style="list-style-type: none"> • Donor restriction • Copyright • Privacy • Publicity • FOIA • Obscenity and Pornography • Slander and Libel • Cultural restrictions • Ethical restrictions 	<ul style="list-style-type: none"> • Check for donor, cultural, ethical, or legal restrictions <i>before</i> providing access. • Consult with the NPS solicitor and your regional/SO curator. • Honor restrictions to the fullest extent allowed by the law. • Allow the researcher to view and use materials for fair use purposes <i>if</i> no restrictions exist. • Don't authorize publication unless the work is in the public domain or the park has the copyright or permission to allow publication from the copyright holder. • Instruct the researcher in writing to obtain written permission from the celebrity or the celebrity's estate before using the material commercially or in a publication. • Talk to your superintendent, regional public affairs officer, regional/SO curator, and FOIA officer if the reference request comes via FOIA. See if a FOIA exemption, such as the privacy exemption, applies. • Review the situation with subject specialists and the NPS solicitor before allowing publication of any images of nudes or potentially defamatory materials. • Ensure the researcher signs a researcher registration form and a copyright and privacy statement <i>before</i> authorizing use. (See <i>MH-II</i>, Appendix D, Figures D.15 and D.16.)

Access and Use Legal Action Chart		
Type of Request The Researcher (NPS or External) asks for . . .	Applicable Legislation or Restrictions	Appropriate Action You, as Park Staff, should . . .
<p>Unpublished written materials, by individuals <i>other</i> than NPS staff, such as:</p> <ul style="list-style-type: none"> • correspondence • diaries • daybooks • ledgers • lists • manuscripts • notes 	<ul style="list-style-type: none"> • Donor restrictions • Copyright • FOIA • Privacy • Publicity • Obscenity and Pornography • Libel • Cultural restrictions • Ethical restrictions • Archaeological Resources Protection Act • National Parks Omnibus Management Act of 1998 • National Historic Preservation Act 	<ul style="list-style-type: none"> • Check for donor, cultural, ethical, or legal restrictions <i>before</i> providing access. • Talk to the NPS solicitor and your regional/SO curator. • Honor restrictions to the fullest extent allowed by the law. • Allow the researcher to view and use copyright-protected work only for fair use purposes (if no other restrictions exist). • Don't authorize publication (grant permission to publish) unless the work is in the public domain or the park has the copyright or permission to allow publication from the copyright holder. • Allow unlimited use of unrestricted materials that are in the public domain. • Talk to your superintendent, regional public affairs officer, regional/SO curator, and FOIA officer if the reference request comes via FOIA. • Determine if a FOIA exemption applies. • Instruct the researcher to obtain written permission from the person quoted or shown or his or her heirs <i>before</i> the researcher publishes, distributes, or otherwise uses the item if the person shown is either a celebrity or a living, private individual. • Review the request with subject specialists and the NPS solicitor <i>before</i> allowing publication of any nudes or potentially defamatory materials. • Ensure the researcher signs a researcher registration form and a copyright/privacy restrictions statement <i>before</i> authorizing use. (See <i>MH-II</i>, Appendix D, Figures D.15 and D.16.)

Access and Use Legal Action Chart		
Type of Request The Researcher (NPS or External) asks for . . .	Applicable Legislation or Restrictions	Appropriate Action You, as Park Staff, should . . .
<p>Published written or recorded materials produced by non-NPS individuals, such as:</p> <ul style="list-style-type: none"> articles books exhibit catalogs pamphlets published manuscripts reports created by individuals <i>other</i> than NPS staff 	<ul style="list-style-type: none"> Copyright FOIA Donor restrictions Cultural restrictions Ethical restrictions 	<ul style="list-style-type: none"> Allow the researcher to view, use for fair use purposes, and make a limited number of copies of a <i>small or insignificant</i> portion of the work if no restrictions apply. For example: let researchers copy a few pages of a long manuscript if the work is not in the public domain. See Sections C.11, C.12, and C.15. Instruct the researcher to obtain written permission from the holder of the copyright <i>before</i> the researcher copies, publishes, distributes, prepares derivative works, performs, or exhibits. Not authorize republication in any format (including published use of extensive quotes) unless the work is in the public domain, <i>or</i> the NPS has the copyrights <i>or</i> permission to allow publication from the holder of the copyrights. Talk to your superintendent, regional public affairs officer, regional/SO curator, and FOIA officer if the reference request comes via FOIA. Determine if there is a FOIA exemption that applies. Ensure the researcher signs a researcher registration form and copyright/privacy restriction statement <i>before</i> you authorize use. (See <i>MH-II</i>, Appendix D, Figures D.15-D.16.)
<p>Archeological research materials such as:</p> <ul style="list-style-type: none"> charts databases field diaries geographic information system records graphics journals or day books maps notes photographs <p>Note: You must deny access to records (including catalog records and databases unless they are set up to electronically block the fields) containing location information for:</p> <ul style="list-style-type: none"> archeological resources, including excavations and shipwrecks caves and cave resources historic resources at risk of 	<ul style="list-style-type: none"> Archaeological Resources Protection Act Federal Cave Resources Protection Act of 1988 National Historic Preservation Act Executive Order 13007—Indian Sacred Sites FOIA Copyright Donor restrictions Cultural restrictions Ethical restrictions 	<ul style="list-style-type: none"> Withhold location information on archeological sites or shipwrecks to prevent looting. Withhold location information on sacred sites. Withhold location information on federally-protected caves if disclosure would create a risk of harm, theft, or destruction. Withhold information on historic resource location, ownership, or character, if the disclosure creates a substantial risk of harm, theft, or destruction of such resources or the area or place where they are located Deny access to the above-described materials, <i>including</i> access for scholarly research. Replace restricted items with a separation sheet and lock up the originals if they pose a disclosure problem. Block the restricted information on catalog cards and databases. Don't restrict the entire collection or unblocked data. <i>Don't alter originals.</i> Consult with the NPS solicitor, FOIA officer, your superintendent, regional public relations officer, and your regional/SO curator. Follow FOIA denial procedures for both NHPA and FOIA. Work with subject specialists to determine if a portion of the information can be provided as long as no location information is included.

Access and Use Legal Action Chart		
Type of Request The Researcher (NPS or External) asks for . . .	Applicable Legislation or Restrictions	Appropriate Action You, as Park Staff, should . . .
harm, theft, or destruction		<ul style="list-style-type: none"> Ensure the researcher signs a researcher registration form and a copyright/privacy restrictions statement before authorizing use if some information is provided (see <i>MH-II</i>, Appendix D, Figures D.15 and D.16). Determine if the records were produced by NPS staff during work hours and are Federal records with no copyright protection or by non-Federal staff or contractors without a copyright statement in their contract. If the latter, copyright permissions may be necessary before providing materials.
Ethnological field records that incorporate information of a sensitive, sacred, or subsistence-related character including: <ul style="list-style-type: none"> charts databases field diaries geographic information system records graphics journals or day books maps notes photographs 	<ul style="list-style-type: none"> Donor restrictions Executive Order 13007 Indian Sacred Sites National Historic Preservation Act FOIA Privacy Publicity Copyright Cultural restrictions Ethical restrictions 	<ul style="list-style-type: none"> Check for donor, cultural, ethical, and legal restrictions before providing access. Talk to the NPS solicitor, regional/SO curator, and the associated group when devising access policies and when questions arise. Honor restrictions to the fullest extent allowed by the law. Consult with your superintendent, regional public relations officer, regional/SO curator, and FOIA officer if the reference request comes via FOIA. Determine if a statutory exemption to FOIA is applicable, such as the privacy exemption. Withhold information on historic resource location if the disclosure creates a substantial risk of harm, theft, or destruction of such resources or the area where they are located. Inform researchers in writing they may need to obtain written permission from the person(s) quoted or shown, or his heirs before publishing, distributing, producing derivative works, etc., if the person shown is a celebrity or a living, private individual. Ensure the researcher signs a researcher registration form and a copyright/privacy restriction statement before authorizing use. (See <i>MH-II</i>, Appendix D, Figures D.15 and D.16.) Determine if the records were produced by NPS staff during work hours and are federal records with no copyright protection, or by contractors without a copyright statement in their contract (may be copyrighted). If the latter, copyright permissions may be necessary before providing materials for use.
Photographic, digital, micrographic, or xerographic copies of NPS-owned museum objects requested for: <ul style="list-style-type: none"> potential publication 	<ul style="list-style-type: none"> Donor restrictions Copyright Privacy Publicity 	<ul style="list-style-type: none"> Check for donor, cultural, ethical, or legal restrictions before providing copies. Consult with the NPS solicitor and your regional/SO curator. Honor restrictions to the fullest extent allowed by the law.

Access and Use Legal Action Chart		
Type of Request The Researcher (NPS or External) asks for . . .	Applicable Legislation or Restrictions	Appropriate Action You, as Park Staff, should . . .
<ul style="list-style-type: none"> exhibition performance distribution <ul style="list-style-type: none"> production of derivative works, such as postcards of paintings. <p>Requested materials for copies might include:</p> <ul style="list-style-type: none"> architectural drawings bound volumes drawings exhibits graphic prints herbarium specimens manuscripts of poems and plays maps mounted animals paintings photographs sculpture other original works 	<ul style="list-style-type: none"> FOIA Obscenity and Pornography Slander and Libel <ul style="list-style-type: none"> Cultural restrictions Ethical restrictions National Park Omnibus Management Act 	<ul style="list-style-type: none"> Allow the researcher to view and obtain limited copies for fair use purposes if no donor restrictions apply. Don't authorize copying, publication, distribution, or the production of derivative works unless the work is in the public domain or the park has the copyrights or permission to allow these activities from the copyrights holder. Inform the researcher that according to Section 106(A) of the Copyright Act of 1976, some visual artists have a right to proper attribution (credit) to their works and maintenance of the integrity of their works (no image modifications such as "morphing"). Instruct the researcher in writing to obtain written permission from the persons quoted or shown or their estates before publishing or distributing the materials. Talk to your superintendent, regional public relations officer, regional/SO curator, and FOIA officer if the reference request comes via FOIA. Determine if a statutory exemption to FOIA applies, such as the privacy exemption. Review carefully the situation with subject specialists and the NPS solicitor before allowing publication of any nudes or potentially defamatory materials. Restrict access to information on objects of cultural patrimony, as well as documents containing specific nature and location of a threatened, rare, or commercially valuable mineral, paleontological object. Ensure the researcher signs a researcher registration form and a copyright/privacy restrictions statement before authorizing use. (See <i>MH-II</i>, App D, Figures D.15-D.16.)
<p>Permission to create facsimile (near identical copies in the same media, same process, and same format) reproductions of original works of creativity, such as:</p> <ul style="list-style-type: none"> furniture graphic prints paintings photography sculpture wallpaper ceramics beadwork quilts 	<ul style="list-style-type: none"> Donor restrictions Copyright FOIA Privacy Publicity Obscenity and Pornography Cultural restrictions Ethical restrictions 	<ul style="list-style-type: none"> Check for donor, cultural, ethical, and legal restrictions before providing copies. Talk to the NPS solicitor and regional/SO curator. Honor restrictions to the fullest extent allowed by the law. Allow the researcher to view and use for fair use purposes if no restrictions apply. Making facsimiles for sale is not a fair use. Instruct the researcher to obtain permission from the copyright holder, unless the facsimiles are being made for preservation, security, or deposit in another repository. Not authorize reproductions in writing unless you are certain the work is in the public domain or the park owns the copyright, or the park has appropriate written permissions from the copyright holder. Inform the researcher that according to Section 106(A) of

Access and Use Legal Action Chart		
Type of Request The Researcher (NPS or External) asks for . . .	Applicable Legislation or Restrictions	Appropriate Action You, as Park Staff, should . . .
<ul style="list-style-type: none"> costumes 		<p>the Copyright Act of 1976, visual artists have a right to proper attribution (credit) of their works and maintenance of the integrity of their works (no modifications such as morphing, digital image manipulation).</p> <ul style="list-style-type: none"> Consult with your superintendent, regional public relations officer, regional/SO curator, and FOIA officer to discover if a statutory exemption to FOIA is applicable, such as the privacy exemption, if the reference request comes via FOIA. Instruct the researchers in writing that they may need to obtain written permission from the persons quoted or shown (identifiable models) before publishing or using commercially. Not authorize facsimiles <i>until</i> permission is obtained unless the model shown is both dead and not a celebrity and your state law allows this. Review the situation with subject specialists and the NPS solicitor <i>before</i> allowing publication of any images of nudes or potentially defamatory materials.
Information or files that are labeled “classified” or “restricted” by the U.S. military or intelligence community, regardless of the date of the material	<ul style="list-style-type: none"> FOIA 	<ul style="list-style-type: none"> Withhold this information. Replace the original document with a completed separation sheet. Lock up the original. If the restricted information is in electronic format, make a copy for access and redact (delete) the restricted information on the copy. Only the classified or restricted material is restricted, not the entire collection or file. Consult with the NPS solicitor and your regional/SO curator about how to make arrangements for declassifying or unrestricting the document with the appropriate branch of the government. You may also ask for help from the National Archives and Records Administration to determine how best to proceed. Work with your superintendent, regional public relations officer, regional/SO curator, and FOIA officer if the request has come through FOIA to ensure proper procedures are followed in denying the request.
<p>Information protected by other FOIA exemptions, including:</p> <ul style="list-style-type: none"> Files of privileged intra-agency communications (<i>Note:</i> Covers very little.) Trade secrets of concessionaires held by the park in trust Financial records Personnel records of living individuals 	<ul style="list-style-type: none"> FOIA Privacy 	<ul style="list-style-type: none"> Withhold this information. Consult with the NPS solicitor and your regional/SO curator about how to proceed. Replace the document with a completed separation sheet. Lock up the original. If in electronic format, make a copy for access purposes with the restricted materials deleted on the copy. Only the problematic material is restricted, not the entire collection. Work with your superintendent, regional public relations officer, regional/SO curator, and FOIA officer if the

Access and Use Legal Action Chart		
Type of Request The Researcher (NPS or External) asks for . . .	Applicable Legislation or Restrictions	Appropriate Action You, as Park Staff, should . . .
individuals <ul style="list-style-type: none"> • Psychiatric, medical, or counseling records of living individuals • Law enforcement and investigatory records that include documentation on living individuals 		request has come through FOIA to ensure that all the proper procedures are followed in denying the request. <ul style="list-style-type: none"> • Work with subject specialists and the NPS solicitor to determine if a portion of the information can be provided, while still maintaining the secrecy of the restricted materials.
Materials, such as files, tapes, or videotapes that contain false and misleading information about a third party that may defame that third party <i>Note:</i> This is one reason why you should discourage access to unprocessed (unaccessioned, uncataloged, unarranged, and undescribed archival and manuscript) materials.	<ul style="list-style-type: none"> • Slander and libel • Privacy • FOIA 	<ul style="list-style-type: none"> • Allow access if the individuals referenced are dead. If the individuals referenced are alive, <i>don't</i> allow copying or publication. Ask your solicitor if state defamation law restricts the material. • Call the NPS solicitor and your regional/SO curator immediately. • Work with your superintendent, regional public relations officer, regional/SO curator, and FOIA officer if the request has come through FOIA to ensure proper procedures are followed in denying the request. Work with subject specialists and the NPS solicitor to determine if a portion of the information can be provided while still preventing a defamation lawsuit. • Ensure the researcher signs a researcher registration form and a copyright/privacy restrictions statement <i>before</i> you authorize use of any information. (See <i>MH-II</i>, Appendix D, Figures D.15 and D.16.)
Paintings, sculptures, and photographs (including historical anthropological photography) of nude people (particularly children) and similar materials that may be judged obscene or pornographic	<ul style="list-style-type: none"> • Obscenity and pornography • FOIA 	<ul style="list-style-type: none"> • Not allow copying or publication of materials that may be judged obscene or pornographic, particularly nudes of children. Talk to the NPS solicitor and your regional/SO curator before allowing any copying or publication of such materials. • Work with subject specialists to provide an appropriate scientific, fine art, or equivalent context for nude imagery. • Work with your superintendent, regional public relations officer, FOIA officer, the NPS solicitor, and your regional/SO curator to determine how to proceed if a request for this material comes via FOIA (applicable only to documents or photos). • Ensure the researcher signs a researcher registration form and a copyright/privacy restrictions statement <i>before</i> authorizing use if some information is provided. (See <i>MH-II</i>, Appendix D, Figures D.15 and D.16.)
Files that have been subpoenaed		<ul style="list-style-type: none"> • Call the NPS solicitor and your regional/SO curator immediately for advice.
Information on the nature and specific location of a NPS resource	<ul style="list-style-type: none"> • National Parks Omnibus 	<ul style="list-style-type: none"> • Restrict information and records containing information on the nature and location of archeological sites.

Access and Use Legal Action Chart		
Type of Request The Researcher (NPS or External) asks for . . .	Applicable Legislation or Restrictions	Appropriate Action You, as Park Staff, should . . .
that is endangered, threatened, rare, or commercially valuable of mineral or paleontological objects or objects of cultural patrimony within the NPS or of an archeological site or burial.	Management Act of 1998 <ul style="list-style-type: none"> Archaeological Resources Protection Act 	<ul style="list-style-type: none"> Restrict information and records containing the nature and location of mineral and paleontological sites if rare, endangered, threatened, or commercially valuable. Restrict information or records containing the nature and location of objects of cultural patrimony found within the NPS.
Information and files as part of a federal audit process		<ul style="list-style-type: none"> Provide the information, unless it falls into a FOIA exemption category (such as classified, protected cave and well location, and archeological site location) in which case you should withhold it. Withhold the information until you check with the superintendent, NPS solicitor, FOIA officer, and your regional/SO curator if you are uncertain about whether there is a restriction. Check <i>very</i> rapidly.
Patented items, including designs, objects, machines, and materials	<ul style="list-style-type: none"> U.S. Constitution 35 USC 	<ul style="list-style-type: none"> Don't produce working 3-D reproductions that are protected.
Trademarked items	<ul style="list-style-type: none"> Common law State law Federal law 	<ul style="list-style-type: none"> Don't brand NPS materials, such as publications, with some other organization's trademark. Don't misuse or allow others to misuse the NPS arrowhead symbol or the DOI buffalo symbol.

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- American Association of Museums*: <<http://www.aam-us.org/>>.

American Association of Museums Registrars Committee (RARIN) Rights and Reproduction Information Network: <<http://www.panix.com/~squigle/rarin/01rcsite.html>>.

American Bar Association: <<http://www.abanet.org>>.

American Law Institute-American Bar Association: <<http://www.ali-aba.org>>.

American Library Association: <<http://www.ala.org>>.

American Law Sources Online (ALSO) at <<http://www.lawsources.com/also>> is a tool for searching state laws.

Association of American Publishers, Inc. at <<http://www.publishers.org>> provides useful information on how to obtain permission from publishers and authors to use copyrighted works.

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CataLaw at <<http://www.catalaw.com>> is a basic gateway site for legal information.

Code of Federal Regulations is searchable on the Web at <<http://www.access.gpo.gov/nara/cfr>>.

Conference on Fair Use (CONFU): <<http://www.uspto.gov/web/offices/dcom/olia/confu>>. CONFU is listed on the U.S. Patent and Trademark Office, which is one of the major players in the ongoing effort to revise and update copyright legislation.

Copyright Clearance Center, Inc (CCC): <<http://www.copyright.com>>. CCC is a licensing agency that provides links to other copyright guidance via its Website.

Copyright, Intellectual Property Rights, and Licensing Issues at <<http://sunsite.berkeley.edu/copyright>> is a University of California at Berkeley Web page that focuses on digital copyright issues.

Cornell University's Legal Information Institute at <<http://www.law.cornell.edu>> is a place to begin your legal research.

Digital Future Coalition at <<http://www.dfc.org>> is a non-profit organization that focuses on copyright ownership and access rights in a digital environment.

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Federal-State Court Directory of the West Publishing Company is at <<http://www.courts.com/>>.

FindLaw at <<http://www.findlaw.com>> is a starting point for legal research, particularly the FindLaw Legal News at <<http://legalnews.findlaw.com>>.

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Great American Website at <<http://www.uncle-sam.com>> provides coverage of federal agencies regulations.

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Hieros Gamos at <<http://www.hg.org/hg2.html>> provides a gateway to legal information.

Intellectual Property Information Mall at <<http://www.ipmall.fplc.edu/>> provides copyright information and links to other information sources.

Internet Legal Resource Guide at <<http://www.ilrg.com>> is a gateway site to many other legal sites.

Law Journal Extra! provides legal news and updates at <<http://www.law.com>>.

Legal Information Institute at <<http://www4.law.cornell.edu/uscode>> provides basic legal information, such the *United States Code*.

Legislative History Resources on the Web includes: Library of Congress's Thomas site: <<http://thomas.loc.gov>> and University of Michigan's Legislative History Site: <<http://www.lib.umich.edu/libhome/documents.center/legishis.html>>.

Library of Congress. *Copyright Law of the United States of America*. Copyright Office. Library of Congress: <<http://lcweb.loc.gov/copyright/title17/#top>>. Also see the *THOMAS: Legislative Information on the Internet* at <thomas.loc.gov/> and the *U.S. Copyright Office* at <lcweb.loc.gov/copyright/>.

Louis-Jacques, Lyonette. *Listserv Lists*: These are Law Listservs at <<http://www.lib.uchicago.edu/~llou/lawlists/info.html>>.

Louisiana State University Libraries' U.S. Federal Government Agencies Page: <<http://www.lib.lsu.edu/gov/fedgov.html>>.

National Association of State Information Resource Executives' State Search is a topical links page to state agencies available at <<http://www.nasire.org/stateSearch>>.

National Initiative for a Networked Cultural Heritage: <<http://www.ninch.org/#issues>>. NINCH is a non-profit organization that offers information on digital copyright legislation and intellectual property rights issues. *Note*: See Basic Principles for Managing Intellectual Property in the Digital Environment, National Humanities Alliance of March 24, 1997, at <<http://www.ninch.org/#issues>>.

Online Legal Guidebooks and Directories available include Martindale-Hubbell: <<http://www.martindale.com>> and West's Legal Directory: <<http://www.lawoffice.com>>.

Piper Resources' State and Local Government Resources on the Net features extensive links to state agencies on the Web at <<http://www.piperinfo.com/state/states.html>>.

Regulation Home Page at <<http://www.regulation.org>> features a guide to information, statistics, and studies on regulations.

Stanford University's Copyright and Fair Use Site at <<http://fairuse.stanford.edu>> is Stanford's Website offering guidance on copyright including laws, opinions, and links to other sites.

State Court Decisions at American Law Sources Online (ALSO): <<http://www.lawsources.com/also>> and <<http://www.wolfenet.com/>>.

State Legislation:

State Legislative Comparisons in chart format: <<http://www.multistate.com/>>.

State Statutes and Legislation (full text): <<http://www.prairienet.org/~scruffy/f.htm>>.

University of Pennsylvania's Drafts of Uniform and Model State Acts: <<http://www.law.upenn.edu/bll/>>.

THOMAS at <<http://thomas.loc.gov>> is a Library of Congress Website with summaries and text of new bills and statutes and is a source for legislative history.

United States Code (at U.S. House of Representatives Law Library): <<http://uscode.house.gov/usc.htm>>. Also available from Cornell at the Legal Information Institute at <<http://www4.law.cornell.edu/uscode>>.

U.S. Copyright Office: <<http://lcweb.loc.gov/copyright>>. This site provides guidance on copyright including registration forms, overviews and summaries, and full text of the laws, plus the *Copyright Office Information Circulars and Form Letters*, available at <<http://www.loc.gov/copyright/circs/>>.

United States Federal Court Decisions and Appeals may be found at <<http://vls.law.vill.edu/Fed-Ct/fedcourt.html>> (Villanova's Center for Law & Information Policy.) and <<http://www.law.emory.edu/FEDCTS>> (Federal Courts Finder at Emory Law School, which connects to individual U.S. Courts of Appeals).

U.S. Patent and Trademark Office: <<http://www.uspto.gov/>>. See *Basic Facts about Registering a Trademark* at <<http://www.uspto.gov/web/offices/tac/doc/basic/>>.

United States Supreme Court Cases and Arguments may be found at the following Websites:

<<http://www.findlaw.com/cascode/supreme.html>>

<<http://www.fedworld.gov/supcourt>>

<<http://supct.law.cornell.edu/supct>>

<<http://oyez.nwu.edu>>

University of Michigan's guide to preparing United States Congress Legislative Histories: <<http://www.lib.umich.edu/libhome/Documents.center/legishis.html>>.

University of Michigan Documents Center for locating government documents is online at <<http://www.lib.umich.edu/libhome/Documents.center>>.

University of Pennsylvania's Drafts of Uniform and Model Acts: <<http://www.law.upenn.edu/bll/ulc/ulc.htm>>.

University of Texas Copyright Crash Course: <<http://www.utsystem.edu/ogc/intellectualproperty/cprtindx.htm>>.

University of Virginia Library's Government Information Resources: <<http://www.lib.virginia.edu/govdocs>> is a guide to government documents.

Volunteer Lawyers for the Arts: <<http://www.vlany.org>>.

Washburn University's WashLaw at <<http://washlaw.edu>> is a gateway site for legal information.

World Intellectual Property Organization (WIPO): <<http://www.wipo.org/>>.

WWW Virtual Law Library at <<http://www.law.indiana.edu/law/v-lib/lawindex.html>> is a gateway to legal information.

Yale University Library. *How to Find Government Information*, a topical guide to government documents, is online at <<http://www.library.yale.edu/govdocs/govdoc.html>>. Also see *LibLicense: Licensing Digital Information* at <<http://www.library.yale.edu/~llicense/index.shtml>>.